

**FILED**  
DISTRICT COURT OF GUAM

FEB - 3 2006

**MARY L.M. MORAN  
CLERK OF COURT**

1 || \$3,700.MDF

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM**

12 UNITED STATES OF AMERICA, ) CIVIL CASE NO. 05-00040  
13 Plaintiff, )  
14 vs. )  
15 \$3,700.00 IN UNITED STATES ) MOTION FOR DEFAULT JUDGMENT  
CURRENCY, ) AND ISSUANCE OF A PRELIMINARY  
16 ) ORDER OF FORFEITURE AND  
17 Defendant. ) MEMORANDUM OF LAW

19 COMES NOW the plaintiff United States of America, by and through its attorneys,  
20 Leonardo M. Rapadas, United States Attorney, and Karon V. Johnson, Assistant United States  
21 Attorney, and hereby moves this Honorable Court for an Order granting to the United States a  
22 default judgment in this case, and issuing a Order of Preliminary Forfeiture based on the  
23 claimant's failure to file an answer as further set forth below.

24       1. The United States initiated a judicial proceeding to effect the forfeiture of this res; the  
25 Verified Complaint of Forfeiture was filed on December 27, 2005.

26 2. A copy of the Verified Complaint of Forfeiture and Warrant for Arrest was served by

hand delivery service, on December 28, 2005, to defendant's attorney, John F. Gorman.

3. The United States contacted Marilyn Alcon, Deputy Clerk, for the U.S. District Court of Guam, for verification of any filings by defendant or its attorney, John F. Gorman. As of today, defendant nor its attorney has filed any form of response to plaintiff's complaint. A copy of the court's docket sheet is attached as Exhibit "A".

#### MEMORANDUM OF LAW

The Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C(6), provides that the claimant shall file a claim within 10 days after process has been executed or within such additional time as may be allowed by the court, and shall serve an answer within 20 days after the filing of the claim.

18 United States Code, § 983(a)(4), however, is in conflict with Rule C(6), in that it provides as follows:

(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint, or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

(4)(B) A person asserting an interest in seized property, in accordance with subparagraph (a), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

Regardless of which rule obtains, it has been approximately 42 days since defendant's counsel, Attorney Matthew Smith received the government's Verified Complaint of Forfeiture. The failure to file a claim in response to the government's complaint means that claimant lacks statutory standing. United States v. Lido Motel, 135 F.3d 1312 (9<sup>th</sup> Cir. 1998). The failure to file a timely answer likewise deprives the claimant of statutory standing. United States v. Commodity Account No. 54954930 at Saul Stone & Co., 219 F.3d 595 (7<sup>th</sup> Cir. 2000).

Federal Rule of Civil Procedure 55 provides that the court may enter an order of default when the party against whom relief is sought has failed to plead or otherwise defend the action as

provided by law. Defendant's counsel has had ample opportunity to respond to the Verified Complaint of Forfeiture and has failed to do so.

## PRAYER FOR A DEFAULT JUDGMENT

**WHEREFORE**, the United States of America prays that this Honorable Court issue a default judgment against defendant, \$3,700.00 in United States Currency and an Order of Preliminary Forfeiture, forfeiting to the United States of America the defendant \$3,700.00 in United States Currency and disposing of it in accordance with the law.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of January, 2006.

**LEONARDO M. RAPADAS**  
United States Attorney  
Districts of Guam and the NMI

By: Karon V. Johnson  
KARON V. JOHNSON  
Assistant U.S. Attorney

# Docket Activity Report

## Civil/Criminal CM/ECF System -- District Court of Guam

**Report Filed Period: 1/1/2005 - 2/2/2006**

Case Number>Title	Dates	Category/ Event	Docketed by	Notes
1:05-cv-00040 <u>United States of America v. \$3,700.00 United States Currency</u>	<i>Entered:</i> 12/27/2005 16:38:00 <i>Filed:</i> 12/27/2005	<i>Category:</i> cmp <i>Document:</i> 1	sai <i>Type:</i> crt	<i>Cause:</i> 08:1324 Aliens: Complaint for Forfeiture <i>NOS:</i> Forfeit/Penalty: Other <i>Office:</i> Hagatna <i>Presider:</i> Unassigned <i>Jury demand:</i> None
		Verified Complaint of Forfeiture filed by United States of America against \$3,700.00 United States Currency. (Attachments: # 1 Cover Sheet)(sai, )		
	<i>Entered:</i> 12/28/2005 13:36:42 <i>Filed:</i> 12/28/2005	<i>Category:</i> service <i>Document:</i> 2	rmm <i>Type:</i> crt	
		Certificate of Service filed by United States of America re 1 Verified Complaint, Warrant of Arrest, and Notice of Arrest (rmm, )		
	<i>Entered:</i> 12/29/2005 10:51:05 <i>Filed:</i> 12/28/2005	<i>Category:</i> order	rmm <i>Type:</i> crt	
		Warrant of Arrest In Rem Issued - U.S. Marshal Service (rmm, )		
	<i>Entered:</i> 12/29/2005 10:52:14 <i>Filed:</i> 12/28/2005	<i>Category:</i> notice <i>Document:</i> 3	rmm <i>Type:</i> crt	
		Notice of Arrest filed by United States of America (rmm, )		

Selection Criteria	
Case Number	05-00040
Office	All

*Exhibit "A"*

Case Type	All
Case Flags	All
Open Cases	Yes
Closed Cases	No
Category (Doc Type)	All
Sort by	case number

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
02/02/2006 13:42:26			
PACER Login:	us5035	Client Code:	
Description:	Docket Activity Report	Search Criteria:	1:05-cv-00040 Filed between: 1/1/2005 and: 2/2/2006
Billable Pages:	1	Cost:	0.08